

REMARKS

Reexamination and reconsideration of claims 1-27, 29-42, and 44 are respectfully requested. Claims 28 and 43 were previously cancelled without prejudice.

Claims 1-3, 7, 13-19, 22, 26, and 30 were rejected under 35 U.S.C. sec. 102(b) applying U.S. Pat. No. 6,466,720 (the '720 patent). For a reference to be applicable under sec. 102(b), the reference must, *inter alia*, disclose each and every feature of the claimed invention.

It is respectfully submitted that the '720 patent does not teach, disclose, or otherwise suggest each and every feature of independent claims 1 or 17. Simply stated, the Office Action states that "Fishlock et al [the '720 patent] disclose a fiber optic cable (10) comprising: a strength member comprising a sheet (14, extruded sheath made of a medium density polyethylene material which a tensile strength), said sheet having at least one fiber access opening (28) leading to at least one formed area..." This is untrue and contrary to the '720 patent.

Specifically, the '720 patent has at least one optical fiber unit 12 disposed within an extruded sheath 14. See Col. 2, ll. 29-31 and Fig. 1 of the '720 patent. The '720 patent states: "[t]he sheath 14 includes peripherally spaced weakened portions 26 facilitating removal of the portion 28 therebetween to provide access to the units 12." See Col. 2, ll. 53-56 of the '720 patent. In other words, sheath 14 completely surrounds the optical fiber unit 12 and it has weakened portions 26 for removing a portion 28 of sheath 14. Consequently, no fiber access opening exists in the '720 patent. For at least these reasons, withdrawal of the sec. 102(b) rejection of claims 1-3, 7, 13-19, 22, 26, and 30 applying the '720 patent is warranted and is respectfully requested.

Claims 1-3, 7, 8, 11, and 13-16 were rejected under 35

09/822,523

C0002

Page 9

U.S.C. sec. 102(b) applying U.S. Pat. No. 5,319,730 (the '730 patent). For a reference to be applicable under sec. 102(b), the reference must, *inter alia*, disclose each and every feature of the claimed invention.

It is respectfully submitted that the '730 patent does not teach, disclose, or otherwise suggest each and every feature of independent claim 1. The Office Action states that the '730 patent discloses "...a cable jacket (1) generally surrounding said strength member being in communication with the at least one fiber access opening (see Fig. 3)." The Office Action further states "[t]he term 'in communication' is a broad term and in a broad sense it is believed that the Rasanen et al reference meets the limitation 'the cable jacket being in communication with the at least one fiber access opening' since the fiber access opening is in close proximity to the cable jacket." This is an incorrect reading of the claim language. A portion of the cable jacket being in communication with the at least one fiber access opening means that the at least one fiber access opening is exposed to the cable jacket. On the other hand, the '730 patent requires a tape 9 that is wound around the reinforcing member 7c, thereby creating a barrier between the cable jacket and the reinforcing member 7c. See Col. 4, ll. 17-27 and Fig. 3 of the '730 patent. For at least these reasons, withdrawal of the sec. 102(b) rejection of claims 1-3, 7, 8, 11, and 13-16 applying the '730 patent is warranted and is respectfully requested.

Claims 1, 7-9, 14, and 15 were rejected under 35 U.S.C. sec. 102(b) applying U.S. Pat. No. 4,846,566 (the '566 patent). For a reference to be applicable under sec. 102(b), the reference must, *inter alia*, disclose each and every feature of the claimed invention.

It is respectfully submitted that the '566 patent does not teach, disclose, or otherwise suggest each and every feature of independent claim 1. First, of the eleven Figures of the '566

09/822,523

C0002

Page 10

patent only Fig. 10 depicts a fiber optic cable; the other ten Figures are optical fiber elements. See Col. 5, ll. 40-63 of the '566 patent. Simply stated, Fig. 2 is not a fiber optic cable; rather it is an optical fiber element 1. Element 1 has a body 2, a ribbon 6 disposed within a compartment 3, and a tape 9 wrapped about body 2. Body 2 is formed from plastic material with a U-shaped cross-section having curved undulations along its longitudinal axis that can change shape and straighten out. Additionally, element 1 uses tape 9 that is helically lapped about body 2. See Cols. 5-6, ll. 65-32 of the '566 patent. In other words, the objective evidence shows that element 1 of the '566 patent does not include a strength member or a cable jacket. Instead, the cable of Figure 10 includes the strength members and jacket. For at least these reasons, withdrawal of the sec. 102(b) rejection of claims 1, 7-9, 14, and 15 applying the '566 patent is warranted and is respectfully requested.

Claims 1-3, 6, 7, 9, 11, 14, and 15 were rejected under 35 U.S.C. sec. 102(b) applying U.S. Pat. No. 4,863,234 (the '234 patent). For a reference to be applicable under sec. 102(b), the reference must, *inter alia*, disclose each and every feature of the claimed invention.

Likewise, the '234 patent does not teach, disclose, or otherwise suggest each and every feature of independent claim 1. Simply stated, the '234 patent is directed to a protective sheath for an optical waveguide splice. See the Abstract of the '234 patent. The '234 patent is not directed to a fiber optic cable and the Office Action is citing elements from the protective sheath for an optical waveguide splice. For at least these reasons, withdrawal of the sec. 102(b) rejection of claims 1-3, 6, 7, 9, 11, 14, and 15 applying the '234 patent is warranted and is respectfully requested.

Claims 1-5, 7-9, 11, 13-23, 26, 30 and 31 were rejected under 35 U.S.C. sec. 102(b) applying WO99/53353 (the '353

09/822,523

C0002

Page 11

publication). The '353 publication requires a fiber optic cable having two profiled bodies that are inserted into each other in such a way that they provide a substantially circular seal for a chamber in the form of a protective tube. See the Abstract of the '353 publication. For a reference to be applicable under sec. 102(b), the reference must, *inter alia*, disclose each and every feature of the claimed invention.

As stated before, it is beyond refute that the '353 publication requires a fiber optic cable having two profiled bodies that are inserted into each other in such a way that they provide a substantially circular seal for a chamber in the form of a protective tube. See the Abstract of the '353 publication. Moreover, the opening of the inner profiled body is not in communication with the cable jacket and the outer profile body must be removed in order access the optical fiber. See Figs. 1-9 of the '353 publication. **Additionally, the Office Action has not provided any objective evidence of record to the contrary.** For at least the reasons stated, the withdrawal of the sec. 102(b) rejection of claims 1-5, 7-9, 11, 13-23, 26, 30, and 31 is warranted and respectfully requested.

Claims 10, 24, and 25 were rejected under 35 U.S.C. sec. 103(a) applying the '353 publication in view of U.S. Pat. No. 6,137,936 (the '936 patent). Again, the sec. 103(a) rejection of claims 10, 24, and 25 is respectfully traversed for the reasons stated above with respect to the '353 publication. For at least this reason, withdrawal of the sec. 103(a) rejection of dependent claims 10, 24, and 25 is warranted and is respectfully requested.

Claims 6, 12, 27, 29, 32-42, 44 were rejected under 35 U.S.C. sec. 103(a) applying the '353 publication without a teaching reference. Again, the sec. 103(a) rejection of claims 12, 27, and 32-44 is respectfully traversed for the reasons stated above. For at least this reason, withdrawal of the sec.

09/822,523

C0002

Page 12

103(a) rejection of claims 6, 12, 27, 29, and 32-42, and 44 is warranted and is respectfully requested.

Claims 13, 16, 17-19, 22, 23, 30, and 31 were rejected under 35 U.S.C. sec. 103(a) applying the '566 in view of U.S. Pat. No. 6,137,934 (the '934 patent). The sec. 103(a) rejection of claims 13, 16, 17-19, 22, 23, 30, and 31 is respectfully traversed for the reasons stated above with respect to the '566 patent. For at least this reason, withdrawal of the sec. 103(a) rejection of claims 13, 16, 17-19, 22, 23, 30, and 31 is warranted and is respectfully requested.

Claims 6, 32, 33, and 36-39 were rejected under 35 U.S.C. sec. 103(a) applying the '566 patent without a teaching reference. The sec. 103(a) rejection of claims 6, 32, 33, and 36-39 is respectfully traversed for the reasons stated above with respect to the '566 patent. For at least these reasons, withdrawal of the sec. 103(a) rejection of claims 6, 32, 33, and 36-39 is warranted and is respectfully requested.


Claims 40 and 44 were rejected under 35 U.S.C. sec. 103(a) applying the '566 in view of the '934 patent. The sec. 103(a) rejection of claims 40 and 44 is respectfully traversed for the reasons stated above with respect to the '566 patent. For at least this reason, withdrawal of the sec. 103(a) rejection of claims 40 and 44 is warranted and is respectfully requested.

No fees are believed due with the filing of this Reply. If any fees are due in connection with this Reply, please charge any fees, or credit any overpayment, to Deposit Account Number 19-2167.

Allowance of all pending claims is believed to be warranted and is respectfully requested.

The Examiner is welcomed to telephone the undersigned to discuss the merits of this patent application.

Respectfully submitted,

  
Michael E. Carroll, Jr.  
Attorney  
Reg. No. 46,602  
P.O. Box 489  
Hickory, N. C. 28603  
Telephone: 828/901-6725

Date: August 16, 2005